

October 16, 2009

MINUTES  
ILLINOIS CIVIL SERVICE COMMISSION  
October 16, 2009

I. OPENING OF MEETING AT 11:06 A.M. AT 160 NORTH LASALLE STREET,  
SUITE S-901, CHICAGO, ILLINOIS

II. PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Betty A. Bukraba, and Ares G. Dalianis, Commissioners; Daniel Stralka, Executive Director; Andrew Barris, Assistant Executive Director; Jan Oncken, Roneta Taylor (by telephone) and Michael Quinlan (by telephone), Illinois Department of Central Management Services; Jan Sampson, Illinois Department of Human Services; DiAna Greene and Win Rawls, Illinois Department of Public Health; and LaTreece Jeffries.

III. APPROVAL OF MINUTES OF REGULAR MEETING HELD SEPTEMBER 18, 2009

**IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 4-0 TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD SEPTEMBER 18, 2009.**

IV. EXEMPTIONS UNDER SECTION 4d(3) OF THE PERSONNEL CODE

A. Report on Exempt Positions

<u>Agency</u>	<u>Total Employees</u>	<u>No. of Exempt Positions</u>
Aging .....	162.....	9
Agriculture .....	482.....	17
Arts Council.....	21.....	2
Capitol Development Board .....	45.....	0
Central Management Services .....	1,467.....	119
Children and Family Services .....	3,075.....	49
Civil Service Commission .....	4.....	0
Commerce & Economic Opportunity .....	436.....	70
Commerce Commission.....	72.....	0
Corrections.....	11,520.....	116
Criminal Justice Authority .....	57.....	6
Deaf and Hard of Hearing Comm. ....	7.....	1
Developmental Disabilities Council .....	9.....	1
Emergency Management Agency .....	97.....	6
Employment Security.....	1,967.....	25
Environmental Protection Agency .....	959.....	19
Financial & Professional Regulation .....	506.....	41
Gaming Board.....	79.....	7
Guardianship and Advocacy .....	111.....	8
Healthcare and Family Services.....	2,383.....	28
Historic Preservation Agency .....	314.....	12
Human Rights Commission .....	14.....	2
Human Rights Department .....	149.....	10
Human Services .....	13,897.....	76
Insurance.....	223.....	9
Investment Board.....	3.....	2
Juvenile Justice .....	1,234.....	20
Labor.....	81.....	7
Labor Relations Board Educational .....	12.....	2
Labor Relations Board State .....	18.....	2
Law Enforcement Training & Standards Bd.....	18.....	1
Medical District Commission .....	2.....	0
Military Affairs .....	125.....	3
Natural Resources .....	1,487.....	24
Pollution Control Board.....	19.....	2
Prisoner Review Board .....	20.....	0
Property Tax Appeal Board .....	20.....	1
Public Health.....	1,119.....	44
Racing Board .....	2.....	0
Revenue .....	2,034.....	64
State Fire Marshal .....	145.....	12
State Police .....	1,380.....	5
State Police Merit Board.....	6.....	1
State Retirement Systems .....	83.....	2
Transportation.....	2,311.....	0
Veterans' Affairs.....	1,195.....	7
Workers' Compensation Commission .....	169.....	9
TOTALS .....	49,539.....	841

**B. Governing Rule - Jurisdiction B Exemptions**

- a) Before a position shall qualify for exemption from Jurisdiction B under Section 4d(3) of the Personnel Code, the position shall be directly responsible to:
  - 1. The Governor, or
  - 2. A departmental director or assistant director appointed by the Governor, or
  - 3. A board or commission appointed by the Governor, or
  - 4. The head of an agency created by Executive Order, or the director or assistant director of an agency carrying out statutory powers, whose offices are created by the Governor subject to legislative veto under Article V, Section 11, of the Constitution of 1970, which agency head, director, or assistant director may themselves be subject to exemption under Section 4d(3), or
  - 5. In an agency having a statutory assistant director, a deputy director exercising full line authority under the director for all operating entities of the agency, provided the statutory role of assistant director is vacant or is assigned clearly distinct and separate duties from the deputy director and as a colleague to him, or
  - 6. A line position organizationally located between the director and/or assistant director and a subordinate statutorily exempt position(s), provided the position proposed for exemption has line authority over the statutory exempt position(s), or
  - 7. The elected head of an independent agency in the executive, legislative, or judicial branch of government.
  
- b) If a position meets the above criterion, it must, in addition, be responsible for one or more of the following before it shall be approved as exempt:
  - 1. Directs programs defined by statute and/or departmental, board, or commission policy or possess significant authority when acting in the capacity of a director of programs to bind the agency.
  - 2. Makes decisions in exercising principal responsibility for the determination or execution of policy which fix objectives or state the principles to control action toward operating objectives of one or more divisions, such decisions being subject to review or reversal only by the director, assistant director, board, or commission.
  - 3. Participates in the planning and programming of departmental, board, or commission activities, integrating the plans and projections of related divisions, and the scheduling of projected work programs of those agencies.

\* \* \*

**C. Requests for 4d(3) Exemption**

- Regarding Item C, Executive Director Daniel Stralka reported that this request is for the Division Chief of Disaster Planning and Readiness, a division of the Office of Preparedness and Response in the Department of Public Health, and had been continued from last month. This position reports to the Deputy Director of Preparedness and Response who in turn reports to the agency director. To meet the reporting requirement, this Deputy Director would have to be considered the equivalent of a statutory assistant director.

Staff had indicated to the agency that it was not prepared to recommend approval of this request because of concern that it had overlapping principal policy responsibilities with its superior Deputy Director position. There were also some overlap concerns with an Illinois Emergency Management Agency position, but the agency explained that Illinois Emergency Management Agency has responsibility for the disaster or emergency event itself while the Illinois Department of Public Health has responsibility for the health and medical ramifications of such an event. The agency responded only the day before the meeting that the Deputy Director has much broader responsibility for the day-to-day details of disaster planning such as drafting and implementing various statewide plans to address such events. The requested position is the one that has principal policy responsibility for the health and medical ramifications of such an event. Staff remained concerned with the level of independent responsibility of the requested position since the position description of the Deputy Director position description that it is the position that “coordinates and directs the programmatic efforts of the Division of Disaster Planning” as its position description indicated. For these reasons, Staff remained unable to recommend approval.

Win Rawls, the Deputy Director of Preparedness and Response, appeared to address these issues on behalf of the agency. He indicated that the Division Chief is more concerned with the day-to-day operations of the Division, and noted the level of expertise the position demanded. Chairman Kolker inquired as to examples of the requested position’s responsibilities. Mr. Rawls cited its appointment to the Illinois Terrorism Task Force and how it acts as a resource for other agencies. It was the consensus of the Commissioners that this matter be continued to allow the agency to address the Staff’s concerns, and the agency concurred with this action.

Commissioner Peterson arrived at 11:15 a.m.

- Regarding Item D, Executive Director Stralka reported that this request is for the Chief of Constituent Services position in the Department of Corrections. This position reports to the statutory Assistant Director. This position has principal policy responsibility for the execution and implementation of statewide policy related to the basic rights and privileges of committed persons. It communicates with inmates, their families, and advocacy groups and then participates in the

planning and programming of agency activities as spokesperson on their behalf, the constituents as referenced in the position description. Due to its function as the primary voice of committed persons within the agency, Staff recommends approval of this request.

- Regarding Item E, Executive Director Stralka reported that this request is for the Deputy Director of Clinical Operations for the Division of Mental Health of the Department of Human Services. This position reports to the Director of the Division of Mental Health who reports to a statutory Assistant Secretary.

This position is responsible for the clinical operations of the Division of Mental Health. Staff had concerns with overlap with the Division Director position and an Administrator position. The agency did not respond until the day before the meeting when it indicated that the Director of Mental Health had been assuming both roles and that it now wished to fill this Clinical Operations position. Staff indicated that was non-responsive so it cannot make a recommendation at this time.

Jan Sampson, Human Resources representative for the agency, appeared before the Commission and confirmed that the Director of Mental Health had been assuming both roles for over two years. Unfortunately, Ms. Sampson was unable to address any of the remaining Staff concerns. She advised the Commission that a representative from Mental Health was planning to appear but was not present. For these reasons it was the consensus of the Commissioners that this matter be continued to allow the agency to address the Staff's concerns, and the agency concurred with this action.

- Regarding Items F1, and F2, Executive Director Stralka noted for the Commissioners that these agenda items reference two positions that had their 4d(3) exemptions rescinded at the Commission's August meeting due to continued vacancy. It was later discovered that at the time of the rescission, both positions had incumbents. The Department of Central Management Services requested that the action rescinding the exemptions be reversed, and that the reversal be effective August 21, 2009 to preserve the continuous service of the incumbents. Staff concurred with this request.

**IT WAS MOVED BY COMMISSIONER EWELL, SECONDED BY COMMISSIONER DALIANIS, AND THE MOTION ADOPTED 5-0 TO GRANT AND CONTINUE THE REQUESTS FOR 4D(3) EXEMPTION FOR THE FOLLOWING POSITIONS, AND TO REVERSE THE AUGUST 21, 2009 RESCISSION OF 4D(3) EXEMPTION STATUS FOR THE FOLLOWING POSITIONS, SUCH REVERSAL TO BE RETROACTIVE TO AUGUST 21, 2009:**

**The following 4d(3) exemption request was granted on October 16, 2009:**

**D. Illinois Department of Corrections**

Position Number	40070-29-00-000-10-02
Position Title	Senior Public Service Administrator
Bureau/Division	Constituent Services
Functional Title	Chief of Constituent Services
Incumbent	Vacant
Supervisor	Assistant Director who reports to the Director
Location	Sangamon County

**The following 4d(3) exemption requests were continued on October 16, 2009:**

**C. Illinois Department of Public Health**

Position Number	40070-20-09-200-00-01
Position Title	Senior Public Service Administrator
Bureau/Division	Office of Preparedness & Response
Functional Title	Division Chief for Disaster Planning & Readiness
Incumbent	Vacant
Supervisor	Deputy Director who reports to the Director
Location	Sangamon County

**E. Illinois Department of Human Services**

Position Number	40070-10-76-600-00-01
Position Title	Senior Public Service Administrator
Bureau/Division	Division of Mental Health
Functional Title	Deputy Director for Clinical Operations
Incumbent	Vacant
Supervisor	Director of Mental Health, who reports to the Assistant Secretary who in turn reports to the Secretary
Location	Sangamon County

**The following 4d(3) exemption rescissions were reversed on October 16, 2009, such reversal retroactive to August 21, 2009:**

**F1. Illinois Environmental Protection Agency**

**F2. Illinois Department of Revenue**

Agency	Position Number	Functional Title
EPA	40070-46-00-000-00-04	Policy Advisor (rescission reversed)
DOR	37015-25-04-100-00-01	Legislative Liaison (rescission reversed)

V. CLASS SPECIFICATIONS

- None submitted

**IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER BUKRABA, AND THE MOTION ADOPTED 5-0 TO DISAPPROVE ANY CLASS SPECIFICATIONS RECEIVED BY THE COMMISSION NOT CONTAINED IN THIS REPORT TO ALLOW ADEQUATE STUDY.**

VI. MOTION TO GO INTO EXECUTIVE SESSION

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND BY ROLL CALL VOTE THE MOTION ADOPTED 5-0 TO HOLD AN EXECUTIVE SESSION PURSUANT TO SUBSECTIONS 2(c)(1), 2(c)(4), AND 2(c)(11) OF THE OPEN MEETINGS ACT.**

<b>KOLKER</b>	<b>YES</b>	<b>EWELL</b>	<b>YES</b>
<b>PETERSON</b>	<b>YES</b>	<b>DALIANIS</b>	<b>YES</b>
<b>BUKRABA</b>	<b>YES</b>		

VII. RECONVENE MEETING

Upon due and proper notice the regular meeting of the Illinois Civil Service Commission was reconvened at 160 North LaSalle Street, Suite S-901, Chicago, Illinois at 11:40 a.m.

PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba, and Ares G. Dalianis, Commissioners; Daniel Stralka, Executive Director; Andrew Barris, Assistant Executive Director; and LaTreece Jeffries.

VIII. NON-MERIT APPOINTMENT REPORT

The Personnel Code permits non-merit appointments for a limited period of time, i.e., emergency appointments shall not exceed 60 days and shall not be renewed, and positions shall not be filled on a temporary or provisional basis for more than six months out of any twelve-month period. Consecutive non-merit appointments are not violative of the Code, however, they do present a possible evasion of merit principles and should be monitored. Set forth below is the number of consecutive non-merit appointments made by each department. These statistics are from the Department of Central Management Services' Consecutive Non-Merit Report.

Agency	8/31/09	<b>9/30/09</b>	9/30/08
Aging	1	<b>1</b>	0
Agriculture	5	<b>5</b>	2
Central Management Services	0	<b>0</b>	4
Children and Family Services	10	<b>7</b>	3
Criminal Justice Authority	1	<b>0</b>	0
Employment Security	10	<b>8</b>	7
Healthcare and Family Services	13	<b>6</b>	12
Historic Preservation	1	<b>1</b>	0
Human Services	1	<b>4</b>	5
Investment Board	0	<b>0</b>	1
Natural Resources	37	<b>32</b>	15
Property Tax Appeal Board	2	<b>0</b>	0
State Fire Marshal	1	<b>1</b>	0
State Retirement Systems	0	<b>0</b>	1
Transportation	8	<b>6</b>	13
Veteran's Affairs	1	<b>0</b>	7
Workers' Compensation Commission	0	<b>0</b>	6
Totals	91	<b>71</b>	76

IX. PUBLICLY ANNOUNCED DECISIONS RESULTING FROM APPEAL

• DISCHARGE

DA-30-09

Employee	Harold R. Hayes	Appeal Date	02/09/09
Agency	DOC	Decision Date	10/02/09
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Conduct unbecoming; being non-alert on duty	Recommended Decision	90-day suspension.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION THAT THE WRITTEN CHARGES FOR DISCHARGE HAVE BEEN PARTIALLY PROVEN AND WARRANT A 90-DAY SUSPENSION IN LIEU OF DISCHARGE FOR THE REASONS SET FORTH IN THE RECOMMENDED DECISION DATED OCTOBER 2, 2009.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

• DISCHARGE

DA-1-10

Employee	LaTreece M. Jeffries	Appeal Date	07/09/09
Agency	DHS	Decision Date	10/02/09
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Unauthorized absences	Recommended Decision	Charges are not proven; discharge is set aside in whole.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER EWELL, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION THAT THE WRITTEN CHARGES FOR DISCHARGE HAVE NOT BEEN PROVEN SO THE DISCHARGE IS SET ASIDE IN WHOLE AND LATREECE M. JEFFRIES IS TO BE REINSTATED TO HER POSITION OF MENTAL HEALTH TECHNICIAN 2 WITH THE ILLINOIS DEPARTMENT OF HUMAN SERVICES.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

- **DISCHARGE**

**DA-2-10**

Employee	John F. Miaso	Appeal Date	08/05/09
Agency	FPR	Decision Date	10/02/09
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Violation of secondary employment policy; unethical behavior; and interfering with an official investigation	Recommended Decision	Charges are proven and warrant discharge.

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION THAT THE WRITTEN CHARGES FOR DISCHARGE HAVE BEEN PROVEN AND DO WARRANT DISCHARGE FOR THE REASONS SET FORTH IN THE RECOMMENDED DECISION DATED OCTOBER 2, 2009.**

<b>KOLKER</b>	<b>YES</b>	<b>EWELL</b>	<b>YES</b>
<b>PETERSON</b>	<b>YES</b>	<b>DALIANIS</b>	<b>YES</b>
<b>BUKRABA</b>	<b>YES</b>		

X. APPEALS DISPOSED OF WITHOUT DECISION ON THE MERITS

- **DISMISSED**

**DA-32-09**

Employee	Dianna J. Zimmer	Appeal Date	02/27/09
Agency	DHS	Decision Date	10/05/09
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Unauthorized absences	Recommended Decision	Dismissed subject to Commission approval; withdrawn.

**DA-47-09**

Employee	Gary Probst	Appeal Date	06/17/09
Agency	DOC	Decision Date	10/05/09
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Conduct unbecoming; failure to maintain accurate inventory reports on medication/supplies	Recommended Decision	Dismissed subject to Commission approval; withdrawn.

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER EWELL, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGES' RECOMMENDED DECISIONS TO DISMISS THE APPEALS OF DIANNA ZIMMER AND GARY PROBST.**

<b>KOLKER</b>	<b>YES</b>	<b>EWELL</b>	<b>YES</b>
<b>PETERSON</b>	<b>YES</b>	<b>DALIANIS</b>	<b>YES</b>
<b>BUKRABA</b>	<b>YES</b>		

Commissioner Dalianis left the meeting at 11:45 a.m.

**XI. REPORT ON THE TREATMENT OF PRIOR DISCIPLINARY INCIDENTS WHICH ARE THE SUBJECT OF PENDING GRIEVANCES**

Assistant Executive Director Andrew Barris presented a report to the Commissioners on the issue of “prior pending discipline.” In disciplinary appeals before the Civil Service Commission, can the Commission consider an employee’s prior discipline if the employee has grieved/appealed the prior discipline and the appeal/grievance has not been resolved?

The Commissioners inquired about the effect of such an approach on an employee’s due process rights and the applicability of the case law to Civil Service Commission cases. Barris reported that there is an absence of Illinois authority directly precluding the Commission from considering prior pending discipline. In fact, the U.S. Supreme Court case United States Postal Service v. Gregory, 534 U.S. 1, 7, 122 S.Ct. 431, 151 L.Ed.2d 323 (2001), upheld a tribunal’s authority to consider prior pending discipline so long as the test set forth in Bolling v. Department of the Air Force, 8 MSPB 658, 9 M.S.P.R. 335, 338-39 (1981), was met. The three prongs of the Bolling test are as follows:

- 1) the employee was informed of the previous discipline(s) in writing;
- 2) the action is a matter of record; and
- 3) the employee was given the opportunity to dispute the charge(s) to a higher level than the authority that imposed the discipline.

However, this should not be applied as a bright line rule. For instance, if it appears that the employee’s pending grievance was not resolved because an agency did nothing to move the grievance forward, then the Administrative Law Judge and/or the Commission would not consider that discipline. In cases such as these, the “opportunity” described in third prong of the Bolling test would be illusory.

It was the consensus of the Commissioners that any consideration of pending prior discipline should be done on a case-by-case basis. Attached to the Minutes is a copy of the report presented to the Commissioners by Assistant Executive Director Barris.

**XII. MEETING SCHEDULE FOR CALENDAR YEAR 2010**

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER BUKRABA, AND THE MOTION ADOPTED 4-0 TO APPROVE THE FOLLOWING MEETING SCHEDULE FOR 2010 AS PRESENTED.**

January 15, 2010	Chicago		July 16, 2010	Chicago
February 19, 2010	Chicago		August 20, 2010	Chicago
March 19, 2010	Chicago		September 17, 2010	Chicago
April 16, 2010	Chicago		October 15, 2010	Chicago
May 21, 2010	Springfield		November 19, 2010	Springfield
June 18, 2010	Chicago		December 17, 2010	Chicago

**CHICAGO MEETINGS WILL BEGIN AT 11:00 A.M. AND SPRINGFIELD MEETINGS WILL BEGIN AT 1:00 P.M.**

**XIII. FY 2009 ANNUAL REPORT**

Executive Director Stralka noted for the Commissioners the new section tracking Administrative Review activity.

**IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER BUKRABA, AND THE MOTION ADOPTED 4-0 TO APPROVE THE FISCAL YEAR 2009 ANNUAL REPORT.**

**XIV. STAFF REPORT**

Executive Director Daniel Stralka reported that:

- Due to the cancellation of scheduled flu shots, the Commissioners are to call Sandy Guppy for information regarding new dates.
- Sandy Guppy completed the FY09 Hispanic Plan Survey, the Small Business Set-Aside Report, and the Business Enterprise Expenditure Reporting. The Commission exceeded its goal by 40% on the latter. The regular two-year compliance audit has been postponed and is now tentatively scheduled to start in late November.

October 16, 2009

- The impact of SB54's amendment to the Personnel Code which indicates that disciplinary hearings for Ethics Act violations now fall under the jurisdiction of the Executive Ethics Commission and not the Civil Service Commission. Upon inquiries by several Commissioners, he pointed out several logistical problems with this new language and informed them that he proposed amendatory language to the Governor's Office in an attempt to ensure employees and agencies are clear as to how any affected disciplinary proceedings should progress.

XV. ANNOUNCEMENT OF NEXT MEETING

Announcement was made of the next regular meeting to be held on Friday, November 20, 2009 in the Commission's Springfield office.

XVI. MOTION TO ADJOURN

**IT WAS MOVED BY COMMISSIONER EWELL, SECONDED BY COMMISSIONER PETERSON, AND THE MOTION ADOPTED 4-0 TO ADJOURN THE MEETING AT 12:08 P.M.**